

**Introduced by Senator Runner**February 18, 2011

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An act to amend Sections 25400 and 25850 of the Penal Code, relating to firearms.

## LEGISLATIVE COUNSEL'S DIGEST

SB 894, as introduced, Runner. Firearms: felons.

Existing law makes it an offense to carry a concealed firearm, as specified. Existing law provides that the offense is punishable as a felony if the offender has previously been convicted of a felony.

This bill would instead provide that the offense would be punishable by 3 years imprisonment in the state prison, if the offender was previously convicted of a felony.

Existing law makes it an offense when a person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory. Existing law provides that the offense is punishable as a felony if the offender has previously been convicted of a felony.

This bill would instead provide that the offense would be punishable by 3 years imprisonment in the state prison, if the offender was previously convicted of a felony.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 25400 of the Penal Code is amended to  
2     read:

1     25400. (a) A person is guilty of carrying a concealed firearm  
2 when the person does any of the following:

3     (1) Carries concealed within any vehicle that is under the  
4 person's control or direction any pistol, revolver, or other firearm  
5 capable of being concealed upon the person.

6     (2) Carries concealed upon the person any pistol, revolver, or  
7 other firearm capable of being concealed upon the person.

8     (3) Causes to be carried concealed within any vehicle in which  
9 the person is an occupant any pistol, revolver, or other firearm  
10 capable of being concealed upon the person.

11     (b) A firearm carried openly in a belt holster is not concealed  
12 within the meaning of this section.

13     (c) Carrying a concealed firearm in violation of this section is  
14 punishable as follows:

15     (1) (A) If the person previously has been convicted of any  
16 felony, ~~or by imprisonment for three years in the state prison.~~

17     (B) *If the person has previously been convicted of any crime*  
18 *made punishable by a provision listed in Section 16580, as a felony.*

19     (2) If the firearm is stolen and the person knew or had reasonable  
20 cause to believe that it was stolen, as a felony.

21     (3) If the person is an active participant in a criminal street gang,  
22 as defined in subdivision (a) of Section 186.22, under the Street  
23 Terrorism Enforcement and Prevention Act (Chapter 11  
24 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

25     (4) If the person is not in lawful possession of the firearm or  
26 the person is within a class of persons prohibited from possessing  
27 or acquiring a firearm pursuant to Chapter 2 (commencing with  
28 Section 29800) or Chapter 3 (commencing with Section 29900)  
29 of Division 9 of this title, or Section 8100 or 8103 of the Welfare  
30 and Institutions Code, as a felony.

31     (5) If the person has been convicted of a crime against a person  
32 or property, or of a narcotics or dangerous drug violation, by  
33 imprisonment in the state prison, or by imprisonment in a county  
34 jail not to exceed one year, by a fine not to exceed one thousand  
35 dollars (\$1,000), or by both that imprisonment and fine.

36     (6) If both of the following conditions are met, by imprisonment  
37 in the state prison, or by imprisonment in a county jail not to exceed  
38 one year, by a fine not to exceed one thousand dollars (\$1,000),  
39 or by both that fine and imprisonment:

1 (A) The pistol, revolver, or other firearm capable of being  
2 concealed upon the person is loaded, or both it and the unexpended  
3 ammunition capable of being discharged from it are in the  
4 immediate possession of the person or readily accessible to that  
5 person.

6 (B) The person is not listed with the Department of Justice  
7 pursuant to paragraph (1) of subdivision (c) of Section 11106 as  
8 the registered owner of that pistol, revolver, or other firearm  
9 capable of being concealed upon the person.

10 (7) In all cases other than those specified in paragraphs (1) to  
11 (6), inclusive, by imprisonment in a county jail not to exceed one  
12 year, by a fine not to exceed one thousand dollars (\$1,000), or by  
13 both that imprisonment and fine.

14 (d) (1) Every person convicted under this section who  
15 previously has been convicted of a misdemeanor offense  
16 enumerated in Section 23515 shall be punished by imprisonment  
17 in a county jail for at least three months and not exceeding six  
18 months, or, if granted probation, or if the execution or imposition  
19 of sentence is suspended, it shall be a condition thereof that the  
20 person be imprisoned in a county jail for at least three months.

21 (2) Every person convicted under this section who has  
22 previously been convicted of any felony, or of any crime made  
23 punishable by a provision listed in Section 16580, if probation is  
24 granted, or if the execution or imposition of sentence is suspended,  
25 it shall be a condition thereof that the person be imprisoned in a  
26 county jail for not less than three months.

27 (e) The court shall apply the three-month minimum sentence  
28 as specified in subdivision (d), except in unusual cases where the  
29 interests of justice would best be served by granting probation or  
30 suspending the imposition or execution of sentence without the  
31 minimum imprisonment required in subdivision (d) or by granting  
32 probation or suspending the imposition or execution of sentence  
33 with conditions other than those set forth in subdivision (d), in  
34 which case, the court shall specify on the record and shall enter  
35 on the minutes the circumstances indicating that the interests of  
36 justice would best be served by that disposition.

37 (f) A peace officer may arrest a person for a violation of  
38 paragraph (6) of subdivision (c) if the peace officer has probable  
39 cause to believe that the person is not listed with the Department  
40 of Justice pursuant to paragraph (1) of subdivision (c) of Section

1 11106 as the registered owner of the pistol, revolver, or other  
2 firearm capable of being concealed upon the person, and one or  
3 more of the conditions in subparagraph (A) of paragraph (6) of  
4 subdivision (c) is met.

5 SEC. 2. Section 25850 of the Penal Code is amended to read:

6 25850. (a) A person is guilty of carrying a loaded firearm  
7 when the person carries a loaded firearm on the person or in a  
8 vehicle while in any public place or on any public street in an  
9 incorporated city or in any public place or on any public street in  
10 a prohibited area of unincorporated territory.

11 (b) In order to determine whether or not a firearm is loaded for  
12 the purpose of enforcing this section, peace officers are authorized  
13 to examine any firearm carried by anyone on the person or in a  
14 vehicle while in any public place or on any public street in an  
15 incorporated city or prohibited area of an unincorporated territory.  
16 Refusal to allow a peace officer to inspect a firearm pursuant to  
17 this section constitutes probable cause for arrest for violation of  
18 this section.

19 (c) Carrying a loaded firearm in violation of this section is  
20 punishable, as follows:

21 (1) (A) Where the person previously has been convicted of any  
22 felony, ~~or by imprisonment for three years in the state prison.~~

23 (B) *Where the person previously has been convicted of any*  
24 *crime made punishable by a provision listed in Section 16580, as*  
25 *a felony.*

26 (2) Where the firearm is stolen and the person knew or had  
27 reasonable cause to believe that it was stolen, as a felony.

28 (3) Where the person is an active participant in a criminal street  
29 gang, as defined in subdivision (a) of Section 186.22, under the  
30 Street Terrorism Enforcement and Prevention Act (Chapter 11  
31 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

32 (4) Where the person is not in lawful possession of the firearm,  
33 or is within a class of persons prohibited from possessing or  
34 acquiring a firearm pursuant to Chapter 2 (commencing with  
35 Section 29800) or Chapter 3 (commencing with Section 29900)  
36 of Division 9 of this title, or Section 8100 or 8103 of the Welfare  
37 and Institutions Code, as a felony.

38 (5) Where the person has been convicted of a crime against a  
39 person or property, or of a narcotics or dangerous drug violation,  
40 by imprisonment in the state prison, or by imprisonment in a county

1 jail not to exceed one year, by a fine not to exceed one thousand  
2 dollars (\$1,000), or by both that imprisonment and fine.

3 (6) Where the person is not listed with the Department of Justice  
4 pursuant to Section 11106 as the registered owner of the handgun,  
5 by imprisonment in the state prison, or by imprisonment in a county  
6 jail not to exceed one year, or by a fine not to exceed one thousand  
7 dollars (\$1,000), or both that fine and imprisonment.

8 (7) In all cases other than those specified in paragraphs (1) to  
9 (6), inclusive, as a misdemeanor, punishable by imprisonment in  
10 a county jail not to exceed one year, by a fine not to exceed one  
11 thousand dollars (\$1,000), or by both that imprisonment and fine.

12 (d) (1) Every person convicted under this section who has  
13 previously been convicted of an offense enumerated in Section  
14 23515, or of any crime made punishable under a provision listed  
15 in Section 16580, shall serve a term of at least three months in a  
16 county jail, or, if granted probation or if the execution or imposition  
17 of sentence is suspended, it shall be a condition thereof that the  
18 person be imprisoned for a period of at least three months.

19 (2) The court shall apply the three-month minimum sentence  
20 except in unusual cases where the interests of justice would best  
21 be served by granting probation or suspending the imposition or  
22 execution of sentence without the minimum imprisonment required  
23 in this section or by granting probation or suspending the  
24 imposition or execution of sentence with conditions other than  
25 those set forth in this section, in which case, the court shall specify  
26 on the record and shall enter on the minutes the circumstances  
27 indicating that the interests of justice would best be served by that  
28 disposition.

29 (e) A violation of this section that is punished by imprisonment  
30 in a county jail not exceeding one year shall not constitute a  
31 conviction of a crime punishable by imprisonment for a term  
32 exceeding one year for the purposes of determining federal firearms  
33 eligibility under Section 922(g)(1) of Title 18 of the United States  
34 Code.

35 (f) Nothing in this section, or in Article 3 (commencing with  
36 Section 25900) or Article 4 (commencing with Section 26000),  
37 shall preclude prosecution under Chapter 2 (commencing with  
38 Section 29800) or Chapter 3 (commencing with Section 29900)  
39 of Division 9 of this title, Section 8100 or 8103 of the Welfare and

1 Institutions Code, or any other law with a greater penalty than this  
2 section.

3 (g) Notwithstanding paragraphs (2) and (3) of subdivision (a)  
4 of Section 836, a peace officer may make an arrest without a  
5 warrant:

6 (1) When the person arrested has violated this section, although  
7 not in the officer's presence.

8 (2) Whenever the officer has reasonable cause to believe that  
9 the person to be arrested has violated this section, whether or not  
10 this section has, in fact, been violated.

11 (h) A peace officer may arrest a person for a violation of  
12 paragraph (6) of subdivision (c), if the peace officer has probable  
13 cause to believe that the person is carrying a handgun in violation  
14 of this section and that person is not listed with the Department of  
15 Justice pursuant to paragraph (1) of subdivision (c) of Section  
16 11106 as the registered owner of that handgun.